

REMARKS

Reconsideration and allowance of this application are respectfully requested in view of the following explanations and remarks.

Applicant and his agent respectfully thank the Examiner for his time and thorough review of the claims and prior art. The Examiner is invited to visit Applicant's website for a clear understanding of the features of Applicant's electronic advertising system:
"www.popbroadcasting.com/main/index.html".

The rejections under 35 U.S.C. 102(e) and 35 U.S.C. 103(a)

Claims 50-51, 54-57 and 59-61, as previously presented, were rejected under 35 U.S.C. 102(e) as being anticipated by Klayh (US 2003/0103644). Claim 52, as previously presented, was rejected under 35 U.S.C. 103(a) as being unpatentable (obvious) over Klayh. Claims 53 and 58, as previously submitted, were rejected under 35 U.S.C. 103(a) as being unpatentable over Klayh in view of Maclean (US 5,771,778). Claims 51-56 and 58-61 have been canceled.

Base claim 50 has been amended to include the limitations of depending claim 54, plus additional distinguishing structural and functional features. It is respectfully submitted that base claim 50, as now amended, is neither anticipated, nor obvious based on the teachings contained in Klayh for the reasons discussed below.

As amended, base claim 50 defines applicant's invention as an electronic advertising system for providing advertising related to consumer goods to a consumer based on the presence of the consumer at a location proximate to a display of the consumer goods. Applicant's system comprises: at least one advertising player disposed proximate to a display of consumer goods, said advertising player containing a processor, memory storage means coupled to said processor, a communication device coupled to said processor for receiving and transmitting digital video and audio advertising media and data, a sensing device coupled to said processor of said advertising player for sensing the presence of a consumer proximate to said advertising player, and a video encoder and flat panel display and an audio encoder and speaker coupled to said processor for reproducing and playing video and audio advertisements from the digital video and audio media and data; said processor programmed to store received digital video and audio advertising media and data related to consumer goods in said memory storage means and, when invoked upon detection by said sensing device, of the presence of a consumer proximate to the display of

consumer goods, to retrieve an advertisement stored in said memory means containing information related to the consumer goods proximate to said advertising player, and play the retrieved advertisement via said video display and audio speaker, and store in said memory means the number of times an advertisement was played in a given period of time, and to transmit, via said communication device, statistical data relative to advertisements played by said advertising player; and

a server disposed remote from said advertising player, said server connected with a controller processor, a communication device coupled to said controller processor and in communication with said communication device of said advertising player for transmitting and receiving digital video and audio advertising media and data therebetween; said server having memory storage means connected with said controller processor containing a database of advertisers, a database of locations of each said advertising player, a repository database of said digital video and audio advertising media and data stored in said memory of each said advertising player, and a database of advertising records; and said server operative to download digital video and audio advertising media and data to each said advertising player, to query each said advertising player to determine the statistical data relative to advertisements played thereby, to alter the sequence of playing advertisements stored in said memory of each said advertising player, to delete selected advertisements from said memory of each said advertising player, to transmit new digital video and audio advertising media and data to be stored in said memory of each said advertising player, and to track the operating status of each said advertising player.

Amended base claims 50 and 57 are not anticipated under 35 U.S.C. 102(e)

For a claimed invention to be properly rejected under 35 U.S.C. 102, the claimed invention must be completely described or illustrated within the four corners of a single prior art reference.

“anticipation is strictly a technical defense...unless all of the same elements [of the sought-to-be patented device] are found [in a single prior art reference] in exactly the same situation and united in the same way to perform an identical function, [the former is not anticipated by the latter.]”
Illinois Tool Works, Inc. v. Sweetheart Plastics, Inc. 436 F.2d 1180, 1182-83, 168 USPQ 451, 453-454 (7th Cir. 1971).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”
Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

It is respectfully submitted that Klayh does not show, teach, or suggest all of the same elements in exactly the same situation and united in the same way to perform an identical function, as recited in amended base claim 50 and that base claim 50, as now amended, is not anticipated, nor obvious based on the teachings contained in Klayh for the following reasons.

Klayh does not show, teach or suggest an **electronic advertising system for providing advertising related to consumer goods to a consumer based on the presence of the consumer at a location proximate to a display of the consumer goods.**

Instead, Klayh is directed toward an electronic video *game* system which presents *targeted advertising to a specific identified person or class of persons* playing the game. Klayh teaches at paragraph 0013 that the invention can display directed advertising to *identified persons or classes of persons* and can be implemented in *an integrated on-line system which can accumulate also exchange values associated with any customer from any merchant which has authorized access to the system*. Klayh teaches at paragraphs 0072 and 0073 that *a key aspect of the system is to control the advertising shown to specific subscribers*. “Identified persons or class of persons” are determined by validation and redemption terminals (11) having bar code card readers (13, 14) in communication with regional servers (1A...1N). Alternatively, persons can be identified by other means, such as by voice recognizer, palm or finger print detector, iris reader, etc.

Klayh does not show, teach or suggest **at least one advertising player disposed proximate to a display of consumer goods.**

Instead, Klayh teaches at paragraphs 0072 and 0073 that the advertising is shown on *a video game (19) at an arcade (17) or on a display (27) of a public PC (25)*, which are connected with regional servers (1A...1N), *each located at a separate regional data center*, and that *advertising can be shown in “slots”, e.g. frames on the video game (19) or public PC display(25,27)* (Paragraph 0045). There is nothing contained in Klayh that suggests that the *video game (19) at an arcade (17) or the display (27) of the public PC (25)* is disposed proximate to a display of consumer goods.

Contrary to the Office Action contention that Klayh teaches at paragraph 0017 an advertising player disposed proximate to a display of consumer goods, Klayh merely teaches at paragraph 0017, that *“a customer can receive a coupon at a gas bar” (or can read an announcement in a newspaper) containing a question to be answered*, and if answered correctly at a validation and redemption terminal (11) used in the system, a prize (e.g. a coupon, or the awarding of loyalty

points which can be exchanged for merchandise or service at participating or at all merchants) can be awarded by the system. Klayh teaches that the coupon or announcement “*constitutes an inducement to attend a terminal*”, where advertising can be directed to the customer, since by answering the question, the customer must identify himself. Thus, the **advertising player is not disposed proximate to a display of consumer goods**.

It should also be noted that Applicant’s advertising player having the features recited in base claim 50 differs from the validation and redemption terminals (11) and public PC (25) taught by Kayh. Klayh teaches at paragraph 0039 that the validation and redemption terminals (11) require a card reader (13) and preferably a bar code reader (14), smart card reader, or the equivalent, coupled to a printer (15); and at paragraph 0042 that the public PC (25) requires a card reader (13), bar code reader (14) and printer (15) coupled to the computer, as well as the display (27), keyboard (28), game controls (e.g. a joystick, mouse, trackball, pedals, etc.) a CD ROM player (29), and a DVD (digital video disk) player (31) or hard drive.

Klayh does not show, teach or suggest at least one advertising player disposed proximate to a display of consumer goods for providing **advertising related to consumer goods** to a consumer based on the presence of the consumer **at a location proximate to a display of the consumer goods**, nor that the processor of the advertising player is programmed to store received digital video and audio **advertising media and data related to consumer goods** in said memory storage means and, when invoked upon detection by the sensing device, of the presence of a consumer proximate to the display of consumer goods, to retrieve an advertisement stored in said memory means **containing information related to the consumer goods proximate to said advertising player**.

Instead, Klayh teaches that the *advertising is related to the demographics of a person or player* present at the location of the validation and redemption terminal (11). At paragraphs 0172 and 0173 Klayh teaches that a key aspect of the system is to control the *advertising shown to specific subscribers. The administrator can specify advertisement types as indicated in the matrix of FIG. 3 as “Ad Target Types to Play”, i.e. types of ads for specific matched demographic player types. The first column in the matrix specifies “When To Play”*. For example, *when no player is present, advertisement types “0x00” followed by “Location Attract”, followed by “Terminal Attract* (for this terminal's ID or a broadcast ID)” are specified. *When an unidentified player is present* (e.g. by detecting a body using an infrared detector), *but no service*

has been selected, an additional advertisement "0x01" is run immediately following advertisement "0x00". Unlike Applicant's system, these advertisement are not related to consumer goods, instead, these two types of advertisements function to attract a person to the location of the terminal and then to the terminal *per se*.

Klayh does not show, teach or suggest that the processor of the advertising player is programmed to store the received digital video and audio advertising media and data related to consumer goods in said memory storage means and, **when invoked upon detection by said sensing device**, of the presence of a consumer proximate to the display of consumer goods, to retrieve an advertisement stored in said memory means containing information related to the consumer goods proximate to said advertising player. In other words, in Applicant's system, **the advertisement is not played until invoked by the presence of a consumer proximate to the display of consumer goods.**

In contradistinction, in the Klayh system, *when no player is present, advertisement types "0x00" followed by "Location Attract", followed by "Terminal Attract" are specified. When an unidentified player is present, but no service has been selected, an additional advertisement "0x01" is run immediately following advertisement "0x00".* Thus, unlike Applicant's system, the Klayh system constantly plays at least two types of advertisements to attract a person to the location of the terminal and then to the terminal *per se*.

As discussed above, the validation and redemption terminals (11) and public PC (25) taught by Kayh are not disposed proximate to a display of consumer goods, and Klayh does not show, teach or suggest that the processor of the advertising player is programmed to retrieve an advertisement stored in said memory means **containing information related to the consumer goods proximate to said advertising player.**

In the Klayh system, *after a person has identified himself or herself*, by using the card reader (13), bar code reader (14), smart card reader, of the or the equivalent at a video game (19) or public PC (25), a different set of ***advertisements are presented to the identified person***, none of which are related to consumer goods proximate to the advertising player. These advertisements are written within a shell (scripting language) of a master game (21), with software "hooks" between the advertisements and shell (where the scripting language controls the application), and the shell is responsible for starting and stopping the advertisements. The master game (21) then controls the local DVD or CD ROM in accordance with the local condition (when to play), and to

run *the advertisements identified in a matrix (Fig. 3) designed to target the identified person or class of persons.*

These particular advertisements displayed to the identified person by the Klayh system are also not related to the consumer goods proximate to the advertising player. Instead, they are selected based on one of the target indicators matched to an identified person or class of person determined by 13 different criteria retained in a subscriber account database (paragraphs 0046-0058). The sequence of the advertisements presented can be selected based on an algorithm. For example, a random number obtained from a random number generator. Advertisement types can also be specified by an administrator for specific matched demographic player types, and the advertisements can be filtered by exclusions (URCs), for unsuitable advertisements. For example, cigarette advertisements or advertisements containing unsuitable subject matter can be excluded from certain locations or excluded from certain classes of viewer based on the identity of the viewer or classes of viewer expected to be at the locations, and competitor's products can be excluded from certain locations (Paragraphs 190 and 191).

Thus, the system taught by Klayh *requires (A) apparatus for identifying a specific person or class of person located adjacent the display apparatus, (B) a database stored in memory that contains correlations of advertisements with at least one of: (C) persons or class of persons, and activities undertaken by or on behalf of persons or classes of persons to which predetermined sequences of advertisements are to be displayed, or (D) apparatus for detecting an activity undertaken by or on behalf of a person or class of person, and for accessing the database and for selecting an advertisement from a group of advertisements correlated to at least one of an activity, person and class of person, and for providing a control code to the advertising player to cause a particular advertisement or sequence of advertisements to be displayed on the display apparatus.*

The remarks set forth above regarding amended claim 50 apply equally to amended base claim 57 which contains essentially the same structural and functional features, but presented in the form of a method claim.

The Klayh method does not contain the structural and functional features, as discussed above, and the Klayh method presents advertising to *a selected person*, and *requires specifically identifying a person adjacent to the display apparatus*, selecting one of a plural *advertisements*

based on the identity of the person, and displaying the selected advertisement via the display apparatus upon *detection of the selected person* adjacent the display apparatus.

Conclusion

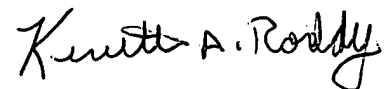
It is respectfully submitted that, clearly, Klayh does not disclose all of the same elements of applicant's claimed invention, as now recited in amended base claims 50 and 57 in exactly the same situation and united in the same way to perform an identical function and should now be allowable base claims.

Therefore, it is submitted that base claims 50 and 57, as now amended, are not anticipated based on the cited Klayh reference, for the reasons set forth above, and should now be allowable base claims.

Accordingly, in view of the foregoing amendments, explanations and remarks it is respectfully requested that amended claims 50 and 57 be allowed and that this application be passed to issue.

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Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth A. Roddy". The signature is written in a cursive, flowing style.

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